IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION.721 OF 2007

Bharat Mahadeo Shirke ..Petitioner

V/s.

M/s.Mahindra & Mahindra Limited & Ors. ...Respondents

Ms.Gayatri Singh for Petitioner.
Mr.C.U. Singh i/b M/s. Sanjay Udeshi & Co. for Respondent No.1.
Mr.P.M. Mokashi AGP for State.

CORAM : V.M. KANADE, J.
DATED : 18th APRIL, 2007.

P.C.:

1. Heard learned counsel appearing on behalf of the Petitioner and the learned counsel appearing on behalf of the Respondents.

2. The Petitioner is challenging the order passed by the Labour Court whereby interim application filed by the Petitioner for continuing his service was dismissed and this order was confirmed in the revision application which was filed by the Petitioner before the Industrial Court.

3. The Petitioner was working as Machine Operator in TTC

Machining Section of the Machine Shop A' Department from 1981. The Respondent No.1 confirmed services of the Petitioner from 1985. In 1997 the Petitioner and four other works filed complaint (ULP) No.659 of 1997. Thereafter incident took place on 02/02/1998 when one worker suffered heart attack and died before he was admitted in the hospital. As a result workers were agitated and they protested the alleged negligence on the part of the Management. Chargesheet was issued against the Petitioner and inquiry was initiated against him on 27/02/1998. It is the case of the Petitioner that he was assaulted by certain office bearers of the Union and therefore, he was not in a position to attend the inquiry. It is the case of the Petitioner that the inquiry was concluded in a hasty manner without considering the evidence which led by him. He therefore, filed complaint(ULP)No.491/1999. In this complaint Labour Court directed the Respondent to maintain status-quo by its order dated 11/08/1999. Thereafter interim relief was vacated by Labour Court on 13/01/2004. However, the order was extended for a period of four weeks. Against this order, the Petitioner preferred revision application in the Industrial Court and during the pendency

of revision application also order of status-quo was extended from time to time. The Industrial Court rejected the application of the Petitioner on 18/09/2006 and the interim order was extended till 18/10/2006. In the meantime interim order was not extended nor any appeal was filed by the Petitioner before this court. The services of the Petitioner were terminated on 13/10/2006.

4. Learned counsel appearing on behalf of the Petitioner submitted that the inquiry which was held by the inquiry officer was not fair and proper and as long as Labour Court has not decided this issue and order of termination is liable to be set aside. Alternatively it is submitted that order of status-quo is not extended, then petitioner is entitled to get subsistence allowance during the pendency of the complaint in the Labour Court. It is further submitted that the Industrial Court also while deciding interim application has practically given finding in favour of the Management and has decided the main complaint itself. She further submits that review application initially has been filed before the same court on account of findings of the Industrial Court, however review application was withdrawn since a petition was also filed in this

court.

5. Learned counsel for the Respondents submitted that the order of status-quo had continued for a period of eight years and that this order had been obtained ex-parte by the Petitioner. He submitted that the question of rendering subsistence allowance did not arise and as such services of the Petitioner were terminated. He submitted that the Labour Court and the Industrial Court had given findings on account of submissions which were made by the learned counsel who appeared on behalf of the Petitioner. He submitted that both the courts had expressly stated in their respective orders that said finding was a prima facie finding. In my view, since services of the Petitioner were terminated after inquiry was initiated and finding of misconduct was given by the inquiry officer, at this stage it will not be possible to pass an order directing the Respondents to re-instate the Petitioner at this stage. The Petitioner is at liberty to take out such application and seek subsistence allowance and if any such application is filed by the Petitioner, same may be decided by the Labour Court in accordance with law.

6. It is clarified that the Labour Court shall not influenced by the observations which are made by the Industrial court and the Labour Court while deciding the interim application which was filed by the Petitioner. Hearing of the complaint is expedited. The Labour Court shall decide the complaint as expeditiously as possible and in any case within one and half years by December, 2008. With these directions writ petition is disposed of.

V.M. KANADE, J.